

REMARKS

In response to the Office Action dated February 8, 2006, the Applicants have amended claims 1, 5, and 13. Claims 1-3, 5-7, 13, 16, 18-22, 24-28, and 30-33 are in the case. Reexamination and reconsideration of the application, as amended, are requested.

The Office Action rejected claims 1-3 and 18-22 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

The Applicant respectfully traverses this rejection. However, in an effort to expedite the prosecution of this case, the Applicant has amended the claims as suggested by the Examiner to overcome this rejection.

The Office Action rejected claims 1-3, 5-7, 13, 16, 18-22, 24-28, and 30-33 under 35 U.S.C. § 103(a) as being unpatentable over Scott (U.S. Patent No. 6,816,464). The Applicant respectfully traverses this rejection based on the amendments to the claims and the arguments below.

The Applicant's amended claims now include monitoring the data transfer metrics using a control software program operating on the computer that is connected to data transfer circuitry and has software that controls the data transfer and determines pathway capacity and a data transfer manager that heuristically identifies an optimal data transfer pathway between the first and second processing applications. Support for the amendments can be found in paragraphs [0005] and [0013] of U.S. Patent Publication Serial No. 2002/0188647 A1. For example, "...the data transfer manager is a computer or processing device..." that executes "...a control program that monitors statistics such as data transfer rate, error rates, buffer overflows and under-runs and the like. Such indicators of a pathway's capacity...are readily available from the data transfer circuitry and software that controls a data transfer."

In contrast, Scott does not disclose, teach, or suggest the Applicant's monitoring the data transfer metrics using a control software program operating on the computer that is connected to data transfer circuitry and has software that controls the data transfer and determines pathway capacity and a data transfer manager that heuristically identifies an optimal data transfer pathway between the first and second processing

applications. Instead, Scott et al. merely disclose "...checking and storing route information..." (see Abstract of Scott). Specifically, unlike the Applicant's invention which uses a control software program that is connected to data transfer circuitry and has software that controls and a data transfer manager that heuristically identifies an optimal data transfer pathway between the first and second processing applications, Scott et al. merely determines routes that are within the network which is common to all the gateway devices (see element 202 of Fig. 2 in Scott) in a non-control software and non-heuristically environment.

For instance, using control software and heuristics to determine an optimal path between processors and computers is not addressed by Scott. In addition, Scott does not determine a direct point to point or an optimal route between a first and second application within the same local exchange. For instance, application (telephone) 216 and application (telephone) 218 of Scott, which represent the end users, or end points of the system, are funneled through gateways 204 and 206 and network 202, and an optimal data transfer pathway between the first and second processing applications is not determined, like the Applicant's claimed invention.

Further, even though the reference does not disclose, teach or suggest all of the Applicant's claimed features, it should not even be considered. This is because Scott teaches away from the Applicant's claimed invention. Namely, Scott explicitly states on col. 2 lines 28-39 that the system uses "...a routing manager or a route management module implemented **at a gateway** for determining which other **gateways** are available to it. A **gateway** can be any server enabled for routing voice data packets. The method involves the **gateway** determining the candidate routes to the other **gateways**, testing those candidate routes, determining candidate route statistics, scoring each candidate route tested, prioritizing each scored route and storing this priority and score information. In one embodiment, a routing manager **on a gateway** tests the routes to other **gateways** so that it can use the proper routes based on the preferences of users. [*emphasis added*]).

This is the opposite of the Applicant's claimed invention which uses the data transfer metrics with at least one of the user-specified data transfer rules to control and

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identify an optimal data transfer pathway between the first and second processing applications. Since Scott requires use of the gateway, it clearly teaches away from the Applicant's claimed invention because non-use of a gateway, like the Applicant's claimed invention, would render Scott inoperable. This teaching away of the Applicant's invention and the failure of the cited reference to disclose, suggest or provide motivation for the Applicant's claimed invention indicates a lack of a prima facie case of obviousness. Thus, the reference cannot render the claims obvious. Consequently, the Applicant respectfully submits that the rejections under 35 U.S.C. 103 should be withdrawn. (MPEP 2143).

With regard to the rejection of the dependent claims, because they depend from the above-argued respective independent claims, and they contain additional limitations that are patentably distinguishable over the cited references, these claims are also considered to be patentable (MPEP § 2143.03).

Thus, it is respectfully requested that all of the claims be allowed based on the amendments and arguments. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. Additionally, in an effort to further the prosecution of the subject application, the Applicants kindly request the Examiner to telephone the Applicants' attorney at (818) 885-1575.

Please note that all mail correspondence should continue to be directed to

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